

**TESTIMONY PRESENTED BEFORE THE  
SENATE COMMITTEE ON INDIAN AFFAIRS**

BY UNITED SOUTH AND EASTERN TRIBES, INC.  
KELLER GEORGE, PRESIDENT

**GOALS AND PRIORITIES FOR THE 107TH CONGRESS**

**April 5, 2001**

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Chairman Campbell, Vice Chairman Inouye, and distinguished members of the Senate Committee on Indian Affairs:

My name is Keller George. I am an enrolled member of the Oneida Indian Nation, and currently serve as President of United South and Eastern Tribes (USET). On behalf of the 24 member tribes of USET, I thank you for this opportunity to present to you our legislative priorities for the 107th Congress.

Our member tribes cover a huge range of circumstances, varying widely in population, tribal government infrastructure, economic development, and natural resources. As such, the issues addressed in this statement do not reflect a priority order – all are critical to the well being of USET tribes.

The tie that binds the various legislative priorities of USET is our commitment to tribal sovereignty and the freedom to exercise that sovereignty through tribal self-governance. The Senate Committee on Indian Affairs has been critical to the protection of tribal sovereignty – whether through legislation that this Committee has approved or disapproved or in your role as an advocate on behalf of tribal concerns in legislation under the jurisdiction of other congressional committees. We truly appreciate this stalwart support, and hope to count on your continued partnership in our ongoing struggle against erosion of tribal governmental rights and the prospect of harmful legislative proposals, federal and state agency actions, and adverse court decisions during the 107<sup>th</sup> Congress.

Examples of actions which have eroded or threaten to erode tribal sovereignty among the USET member tribes are:

- Effort to by the state of Maine to assume all authority and jurisdiction of their National Pollution Discharge system within the borders of tribal lands in Maine.

- Effort by the state of Louisiana to require state licenses for the tribally chartered Chitimacha insurance company.
- Federal legislation, HR 240, which would prohibit the Poarch Band of Creek Indians from using certain lands it currently has in trust for gaming purposes.
- Federal law which singles out the Narragansett Tribe as being ineligible to operate gaming in Rhode Island under the authority of the Indian Gaming Regulatory Act.
- The National Labor Relations Board General Counsel has asked the agency to reverse its long-standing precedent and unlawfully subject Indian nations to the National Labor Relations Act.

We ask your continued help in solidifying tribal sovereignty by promoting positive legislation under this committee's jurisdiction which furthers tribes' ability to govern, such as the Self-Governance measure passed last year. It is also vital that this Committee continues to be actively involved with other committees on legislation that impacts tribal governments – evaluating legislation with regard to its impact on tribes and educating and coordinating with congressional colleagues and staff. The Finance Committee's jurisdiction over tax and other financial matters, Medicare, Medicaid, and social service entitlement programs makes the work of that Committee particularly critical to Indian country.

We appreciate that this Committee sponsors issue briefings for congressional staff, and encourage you to continue in this endeavor.

Finally, we ask your assistance in building tribal relationships with the new Administration. As with any new Administration, there is a great deal of initial education and introduction that must be undertaken. We look forward to developing positive working relationships with federal officials and White House staff, and welcome your assistance in building smooth pathways for communication between all of us who are concerned with the well being of American Indian and Alaska Native communities.

Below are outlined specific legislative issues of importance to USET member tribes. We have attached issue papers and resolutions on many of these topics. Also attached is a map of the USET area, a list of our member tribes and other information about our organization.

## **APPROPRIATIONS**

The USET Tribes are encouraged by Secretary Norton's recent statement in testifying before this Committee that she and President Bush are "both believers in the concept of Self-Determination." As the Committee is well aware, adequate funding is essential to continuing the successes achieved under Self-Determination and Self-Governance. Because we have not seen the details of the proposed FY 2002 budget

request, we urge the Committee to keep in mind the following when considering Indian funding related issues:

- *Tribal Priority Allocations (TPA).* As indicated by the initial data from Census 2000, tribes will face increased demands for services to their communities and families due to the population growth on reservations. However, TPA funds, which are utilized to provide on-going, essential services at the local tribal level, have not been increased at levels that would meet the growing needs of each tribe. According to the 1999 Tribal Report on TPA, the unmet need in TPA-funded programs was estimated at \$688 million.
- *Means Testing.* In recent years, Congress has expressed concern about perceived "inequities" in funding and considered imposing a "means test" to allocate federal funds to tribes. We certainly commend members of this Committee for successfully fighting these ill-conceived proposals that would stand in stark violation of the federal trust responsibility. We remain strongly opposed to any type of means test to determine whether or how much federal assistance a tribe may receive *until Congress first ensures that the unmet needs of all tribes have been met.* Although some of our member tribes have recently begun to achieve economic success through their various businesses, there are decades—if not centuries—of poverty from which the tribes must rebuild. The toll on human health, education, and welfare has been tremendous and the tribes are still building the infrastructure and systems necessary to cultivate economic development.

We instead encourage this Committee to continue efforts to develop long-term solutions identified by the 1999 Tribal Report on TPA, which includes the "Tiered Methodology" for funding distribution that USET first proposed in 1998. This method provides that future TPA funding *increases* would be distributed to all tribes but at an accelerated rate to the lower-funded tribes in order to address the disparities among tribes. We attach our testimony on this topic as an additional resource.

*Contract Support and Administrative Cost Grants.* Both contract support costs (CSC) funds and Administrative Cost Grants (AC Grants) are intended to fund the additional costs incurred by tribes when they contract to operate federal programs. These are costs not necessarily borne by the federal contracting agency, e.g., GSA lease support, agency legal counsel or Department of Justice legal support, retirement costs, telecommunications costs, etc. AC Grants are the mechanism by which tribes that operate BIA-funded schools receive funding for administrative and indirect costs. Although it is irrefutable that these funds are a critical element in fulfilling the federal policy of encouraging tribal governments to design and administer services locally for their members, CSC and AC Grants have been seriously underfunded for a number of years.

The FY 2001 estimated shortfall for CSC funds was \$16.9 million for BIA programs, and \$13 million for AC Grants. Whenever the appropriations fall below the needed amount, all contractors and schools suffer a pro-rata

reduction in CSC and/or AC Grant funding, and, thus, must offset these shortfalls with reduced services, reductions in force, delayed updating of financial systems, etc.

We appreciate the increases provided by Congress in the past several years for IHS Contract Support but there is still an existing shortfall of approximately \$45 million for ongoing and new contractors. We urge Congress to fully fund IHS contract support costs.

Finally, we urge this Committee to work in tribes in educating other Committees of Congress and federal agencies outside of the BIA and IHS that contract support costs are a legitimate and necessary part of this nation's policy which recognizes and promotes tribal self-determination.

*Tribal Historic Preservation.* Beginning in 1996, tribes, under the authority of the National Historic Preservation Act, began establishing Tribal Historic Preservation Offices to take over the duties of the State Historic Preservation officers on tribal lands. There are now 27 Tribal Historic Preservation Offices (THPOs), of which seven are USET members – Wampaoag, Narragansett, Catawba, Poarch Band of Creeks, Tunica-Biloxi, Eastern Band of Cherokee and Seneca. The National Park Service reports that there is interest among many other tribes in establishing THPOs. Congress is providing about \$5 million annually for tribal historic preservation programs. The THPOs receive a base of \$100,000 plus some additional funding based on population. Other parts of the \$5 million are distributed competitively to tribes for preservation programs outside of the THPOs. Establishing and carrying out the duties of a Tribal Historic Preservation Office is an enormous undertaking, and is an attribute of tribal sovereignty. We urge Congress to significantly increase funding for THPOs so that they can better meet the requirements of their offices and so that additional tribes can establish THPOs.

The ability of tribal governments to provide services to their members is directly impacted by the amount of federal funding made available for tribes. We ask this Committee to continue advocating for funding that more accurately reflects tribal needs and the United States' trust responsibility for tribes. We are fortunate that six members of the Senate Committee on Indian Affairs also serve on the Appropriations Committee. We know the Indian Committee's work has been very important in securing recent funding increases for contract support costs, diabetes programs, BIA school construction, and law enforcement, among other areas. We ask your continued support in maintaining the critical gains in these areas, as well as in securing additional funding the several key areas mentioned above that are in need of immediate attention.

## **Child Welfare**

*Indian and Alaska Native Foster Care and Adoption Services Amendments of 2001.* USET strongly supports S. 550, the Indian and Alaska Native Foster Care and Adoption Services Amendments, legislation which would end the wholly inequitable treatment afforded Indian children under the Foster Care and Adoption Assistance Act

(found in Title IV-E of the Social Security Act). That Act was enacted in 1980 and it provides funding, on an open-ended entitlement basis, to state governments to administer foster care and adoption programs for children who meet income eligibility requirements. The Act applies to state governments and children placed by state agencies, leaving out tribal governments and children under tribal jurisdiction who are placed in foster and adoptive homes by tribal agencies.

We thank Senator Daschle and the cosponsors of the legislation, including Senators Inouye, McCain, and Johnson of this Committee, for working to bring equity for Indian children under the Foster Care and Adoption Assistance Act. It is ironic, and sad, that we have a federal entitlement program regarding foster care and adoption services, but leave out of its benefits Indian children who are placed in out-of-home placements at a rate higher than any other group. And Indian children, according to the most recent Department of Justice figures, suffer the highest rate of abuse and neglect of any group in the nation – a tragic situation, which often leads to the necessity of removing a child from his or her home.<sup>1</sup>

Some tribes and states have been able to work out agreements to provide tribes at least some of the resources that states receive under the IV-E program. Often these agreements do not provide tribes with administrative, training, case management and data collection funds that states receive under the Act. The agreements usually focus on the provision of monthly payments to the foster home. Among the USET tribes only St. Regis Mohawk has a tribal/state agreement for the IV-E program.

*Bush Administration Child Welfare Proposal.* The Bush Administration outline for child welfare does not contain many details, but we are nevertheless concerned that it makes no mention of Indian children. We are also concerned with its implication that "permanence" is narrow concept that may leave out kinship care, guardian arrangements, and other tribally approved living arrangements for children who are removed from the homes of their biological parents.

It is possible that the President's recommendation of a \$1 billion increase over 5 years for child welfare will be considered as part of the reauthorization of the Promoting Safe and Stable Families Act (found in Title IV-B, Subpart 2 of the Social Security Act). Tribes currently receive a 1% statutory allocation under this Act. We will closely examine this proposal as it becomes more fully developed. The Promoting Safe and

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<sup>1</sup> U. S. Bureau of Justice statistics for 1995 reported a per capita rate of one substantiated report of a child victim of abuse or neglect for every 30 American Indian children aged 14 or younger. This compares to one report for every 58 children of any race, approximately half the rate for Native children. It was the highest rate of abuse or neglect reported for any ethnic group.

In addition, American Indians and Asians were the only racial/ethnic groups to experience increases in the rate of abuse or neglect of children under age 15 from 1992 to 1995 (Dept. of Justice, 1999). Data from the National Child Abuse and Neglect Data System (NCANDS) show that, for child maltreatment victimization rates by race and ethnicity in 1998 (40 states reporting), the rate for Native children was 19.8 cases per 1000 children. This compares to a rate of 3.8 for Asians/Pacific Islanders, 8.5 for Whites, and 10.6 for Hispanics (U.S. Dept. of Health and Human Services, Children's Bureau, 2000).

Stable Families Act will be reauthorized this year, and we believe that it should be amended to provide additional resources to tribes. Currently 66 tribes share an allocation of only \$3 million under that Act.

## **Economic Development**

The economic diversity of our member tribes reflects the wide differences in economic circumstances that exist among the tribes nationwide. We have a member tribe whose only source of funding is the minimum level of BIA TPA funding of \$160,000. With these meager funds they are desperately focused on establishing their basic tribal government, which leaves them no funds to develop business ordinances, codes, and strategic planning that would prepare them for a greater chance of achieving economic success. At the other end of the spectrum, we have tribes who have achieved the capacity to extensively diversify their economic base. It is critical for Congress to recognize that the economic success of a very few does not mean it is time to withdraw support for federal responsibilities.

Sustained economic growth for all Indian communities has been a long-held goal for tribes as well as this Committee. The elements critical to achieving that goal have not changed significantly since we last testified before the Committee on this topic in 1998. We still hold that improving the economic status of tribes can be achieved through—

1. *Honoring tribal sovereignty* so that tribes may self-regulate their economic affairs and interact with the federal government on a government-to-government basis, rather than fighting off legislative and regulatory attempts to diminish their authority.
2. *Honoring trust responsibility* to provide the health and education services which will enable tribes to move toward economic development with a skilled and healthy workforce.
3. *Offering meaningful tax incentives* for private investment on Indian lands such as the proposed legislation to allow tribes to issue revenue bonds and tax-exempt financing.
4. *Improving the infrastructure on tribal lands.* Tribes must be able to provide adequate water, sewer, roadways, electricity and communications systems in order to attract new businesses.

We applaud the Committee's efforts to enact legislation that would allow tribes to consolidate economic development resources from various agencies/programs under one Self-Determination contract and coordinate the role of the federal agencies. We hope to work closely with you in this Congress to secure enactment of this and other proposed legislation that addresses our economic development needs. In addition to the legislation already noted, we urge the Committee to oppose further attempts to subject tribes to the National Labor Relations Act.

## Education

We greatly appreciate the work of this Committee in drafting S. 211, the Native American Education Improvement Act of 2001, which concerns elementary and secondary schools in the BIA system. Tribal children among the USET tribes attend a mix of BIA and public schools. To that end, we hope that you will continue to work with tribal leaders and advocates to ensure that the broader Elementary and Secondary Education Act reauthorization includes provisions to ensure that Indian youth in both the public school systems and the BIA-funded school system receive all of the support they need.

The USET Tribes are pleased that the new Administration has placed education among its highest priorities, and has pledged that the "federal government will meet its responsibilities to Native American children." We hope that this year will mark a turnaround in the chronic funding shortfalls that have too long plagued BIA funded schools and public schools with high numbers of Indian students.

We strongly support fulfillment of President Bush's campaign promise to devote \$1 billion to fully fund the maintenance backlog and construction needs of BIA schools. But it is also critical that these schools have adequate resources to fund the educational program itself, funding to draw and retain teachers, ensure prudent administration of schools, and otherwise ensure that what goes on *inside* the schools receives as much attention as the school facilities themselves. To this end, it is important that the BIA schools receive full funding for the Administrative Cost Grants (approximately \$55 million in FY 2002) and that the core funding for these schools be increased to a level more equitable with other schools, or \$4,000 per student. We also support increased funding for the Johnson O'Malley Program, which provides funds to both BIA and public schools, and urge that the funding take into account increased student enrollment.

The Impact Aid program is vital to public school districts that contain Indian trust lands, and we are encouraged by recent increased appropriations for the Impact Aid basic support payments and for construction for these schools.

## Health

*Indian Health Care Improvement Act.* USET was an active participant in the National Steering Committee made up of tribal leaders who drafted a proposal for reauthorization of the Indian Health Care Improvement Act, and we urge its enactment. We believe that pending Senate bill, S. 212, which would bring more of the IHS funding to the local level, improve access to Medicare and Medicaid, provide new options for facility construction, and

provide better coordination among behavioral health services (social services, mental health, substance abuse) will result in improved health care for Indian people. We appreciate that this Committee held hearings on the reauthorization of this important health legislation last Congress and that the bills introduced in the House and Senate largely reflect the work of the tribal Steering Committee. We realize that both the legislation and the committee jurisdictional issues surrounding it are complex, and are willing to put a lot of effort into working for its enactment.

*Elevation of the Position of the IHS Director.* We support legislation, S. 214, which would elevate the position of the IHS Director to that of an Assistant Secretary. This Committee has been persistent in its advocacy for this bill, and we appreciate that. We believe that an Assistant Secretary for Indian Health will be in a better position within the Department of Health and Human Services to advocate for IHS funding. We also believe that an Assistant Secretary will have more clout in working with other Assistant Secretaries in the Department to increase tribal access to other programs, e.g., mental health funding.

*Level of Need Funded.* We believe the concept of a comparison of the funding available for the IHS services population to the nation as a whole is a sound concept, and one that could lead to increased funding for Indian health programs. We are, however, troubled by the development of a Level of Need Funded (LNF) for tribes which could be used to as a comparative tool between tribes and result in a reallocation of existing funds among tribes. The USET tribes believe that the utilization of the LNF methodology as anything other than a national benchmark for overall funding is inherently flawed.

Our attached position paper details a number of concerns we have about the methodology utilized by the LNF workgroup. We believe that contract support costs and tribal shares should not be counted as resources in the calculation of LNF percentages. CSC funding is, by definition, funding to provide a tribe with resources equal to that which the Secretary is provided by the federal government for the federal direct-operated operating unit. Similarly, tribal shares are not identified in the amounts allocated to federal direct-operated operating units, and that creates a bias when using the current LNF methodology to compare the differing operating units.

Finally, we want the Committee to know that we are opposed to using an LNF methodology for distribution of any IHS funds other than the Indian Health Care Improvement Fund.

*Contract Health Services.* Contract Health Services (CHS) funding is a critical component in the provision of health care to Indian people. It provides funding for health care services that are not available in IHS and tribal health facilities. CHS is heavily affected by the medical inflation rate. We greatly



appreciate the \$40 million increase in Contract Health Services for fiscal year 2001, and urge that this program receive an increase in FY 2002 as well. IHS reported in its FY 2001 budget justification that in fiscal year 1999 it deferred payment on 84,085 recommended contract health services cases due to inadequate funding.

USET supports the formula developed by the IHS CHS workgroup for distribution of the \$40 million increase in that program. The formula takes into account congressional mandates, the needs of unfunded tribes, maintenance of buying power by addressing inflation, population, influence of local costs differences, and access to inpatient health services. We also believe that this formula and other distribution formulae must be reviewed on an annual basis to incorporate the most current and verifiable local data.

*Diabetes Funding Distribution.* USET thanks the Committee for its role in last year's amendments to the Balanced Budget Act, which increased and extended the entitlement diabetes funding for Indian tribes and urban Indian organizations. Given the extremely high incidence of diabetes in Indian country, we urge that this be ongoing funding beyond fiscal year 2003. While we hope great progress is made in the prevention and treatment of diabetes by fiscal year 2003, we know that there will still be much work to be done after that date.

USET supports the use of the existing distribution methodology for the entire amount of FY 2001 diabetes funds (\$30 million previously made available through the Balanced Budget Act of 1997 and an additional \$70 million made available through the Balanced Budget Act of 2000). We support use of the existing methodology for the FY 2001 funds so that they can be disbursed in a timely manner. However, we believe that the distribution methodology for funding that begins in FY 2002 should be analyzed and modified. We urge that newly appropriated diabetes funds be allocated to tribes for prevention and treatment activities and not diverted to universities or special interest organizations for research purposes.

*Dr. Trujillo.* USET commends Dr. Trujillo for his good work and advocacy for Indian and Alaska Native people as Director of the Indian Health Service, and we are on record in asking the Bush Administration to allow him to remain in his position for the remainder of his term.

## **LAW ENFORCEMENT**

The USET tribes strongly endorse increases to the BIA/DOJ Law Enforcement initiative as a high priority for future appropriations. We firmly believe that law enforcement is an essential component of a tribal government's ability to govern and an integral part of successful economic development. Like other tribes nationally, USET tribes are experiencing

increased rates of crime and violence. But, with limited resources, many of our member tribes are unable to provide law enforcement on the twenty-four hour/seven days a week basis that would lead to more peace and stability in our communities.

In order to strengthen our law enforcement programs, we believe that BIA and DOJ should work with the tribes to develop and implement model cross-deputization agreements. Since we work with not only local law enforcement officials but also state police and other federal law enforcement officials such as National Park Service Rangers, consistent recognition of tribal law enforcement authority would improve interaction with these other agencies. Similarly, there is a need to develop a Memorandum of Agreement between tribal police and U.S. Attorneys that establishes the standards for bringing cases to the federal courts. These actions would go far in promoting the legitimacy of tribal law enforcement programs.

In the 106th Congress, the Committee was instrumental in the enactment of the Indian Tribal Justice and Legal Assistance Act. We hope that this Congress will appropriate the funds necessary to support much-needed development of tribal justice systems. In addition to increased funding for tribal courts, additional technical assistance and regionally based training have been identified needs of the USET tribes.

## **Federal Recognition**

The USET Tribes are concerned that the discussion and consideration of the tribal federal recognition process has become mired in controversies regarding two related but separate processes—trust land acquisitions and tribe-state agreements for gaming. We believe it is misleading and prejudicial for the opponents of the recognition process to assert that recognition will lead to wide expansion of Indian gaming and significant loss of revenue from lands taken into trust on behalf of the tribe. What the opponents fail to make clear is that it is only *after* achieving federal recognition that a new tribe would be able to pursue gaming under the Indian Gaming Regulatory Act and the acquisition of lands in trust. Both of these processes are time-consuming and wholly separate from the recognition process.

The process for American Indian groups to attain federal recognition has become an arduous, costly and very lengthy endeavor, a process that must be improved so that it is not politicized and moves the applications in a timely manner. We support the Committee's efforts to improve the process but request that the Branch of Acknowledgment and Research (BAR) activities remain within the Bureau of Indian Affairs rather than creating an independent Commission. We ask the Committee to consider the following in improving the BAR process—

Provide adequate funding for the BAR

Establish enforceable timeframes under which the BAR must complete its work  
Authorize the BAR to contract with experts and research institutions to conduct research and analysis, with the BAR retaining final review under the acknowledgment criteria

Finally, we would urge that the responsibility for final decisions on applications for federal recognition remain with the Assistant Secretary. As with other matters of federal policy, the Assistant Secretary considers the recommendations of the staff but the final decision lies with the Assistant Secretary. Federal recognition decisions should be handled the same way.

### **Federal Communications Commission**

USET is greatly concerned that the FCC has not taken seriously its consultation responsibilities with our member tribes, particularly when it comes to the licensing and siting of communications towers. As we all know, literally tens of thousands of these towers have been constructed across the country, with tens of thousands more in the planning stages. A number of these towers have, or may have, an adverse impact on sites of religious and cultural importance to tribes. The National Historic Preservation Act provides, among other things, that federal agencies "shall consult with any Indian tribe and Native Hawaiian organization that attaches religious or cultural significance" to properties that might be affected by a federal undertaking. 16 U.S.C. Section 470a(d)(6)(B). The FCC licensing process is a federal undertaking but the FCC has consistently failed to consult with tribes.

The FCC adopted rules last year to provide incentives for wireless telecommunications carriers to service Indian country. At the same time, FCC seems to have attempted to delegate its consultation responsibilities to the tower industry to which we strongly object.

We applaud FCC's actions last year in issuing a policy statement establishing a government-to-government relationship with Indian tribes and approval of a plan to subsidize telephone service in Indian country. However, there is still a long way to go in establishing a productive working relationship between the FCC and tribes. The FCC has held several multi-day meetings with tribes in various parts of the country but unfortunately not in the USET area.

Of note is FCC Commissioner Tristani quoted in the March 19, 2001, issue of *Communications Daily* expressing concern that the programmatic agreement on wireless communications towers fell short of the FCC's obligation to facilitate tribal consultation. She stated that "[t]he overwhelming majority [of tribal comments] told us our approach is not working. This response is prima facie evidence that our understanding of tribal consultation is misguided."

USET urges this committee to examine closely the FCC's obligations in this area.

**Other.** There undoubtedly will be other items of interest to our member tribes which will come up during the course of the 107th Congress, and we will want to be in communication with you. One such item is the welfare reform statute which we expect will be reauthorized in 2002. USET is represented on the NCAI task force on welfare reform, and that organization has given testimony to this Committee on principles which should be utilized in the reauthorization process. We support those principles and expect to have more detailed proposals as this process evolves.

The requests we make of you – protecting tribal sovereignty through the legislation under the Senate Committee on Indian Affairs' jurisdiction, working with other Congressional committees on legislation of importance to tribes, building working relationships with the new Administration – are things we require of USET also. We will do our part.

Again, thank you for requesting the input of the United South and Eastern Tribes concerning the legislative agenda of the 107th Congress.